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Investigation by the Department of Telecommunications	)	
and Energy on its own motion, pursuant to G.L. c. 164,	)	
§§ 1E, 76 and 93, into Boston Edison Company, Cambridge)	)	
Electric Light Company and Commonwealth Electric	)	
Company, d/b/a NSTAR Electric's service quality filings,	)	D.T.E. 01-71A
including but not limited to, their service quality filings	)	
submitted in response to Service Quality Standards for	)	
Electric Distribution Companies and Local Gas	)	
Distribution Companies, D.T.E. 99-84	)	
	)	

\_\_\_\_\_The Attorney General moves, pursuant to Mass.R.Civ.P. 37 and 220 C.M.R. § 1.06(6)(c)(4), that the Department of Telecommunications and Energy (“Department”) compel Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a NSTAR Electric (“NSTAR” or the “Company”) to answer the following Information Requests of the Attorney General: AG 1-9; AG 1-12; AG 1-13; AG 1-15; AG 1-17; AG 1-18; AG 1-22; and AG 1-23.

On January 4, 2002, the Attorney General issued his First Set of Document and Information Requests which consisted of twenty three (23) Information Requests. On January 16, 2002, the Company provided untimely responses to the Attorney General's Information

Requests.<sup>1</sup> The Company also responded that the data requested by AG 1-9; AG 1-12; AG 1-13; AG 1-15; AG 1-17; AG 1-18; AG 1-22; and AG 1-23, were beyond the limited scope of the proceeding and cited the Department's December 7, 2001, Procedural Order in support of its claim. The Attorney General's Information Requests and the Company's defense is attached as Attachment 1.

During Evidentiary Hearings conducted on Tuesday, January 22, 2002, the Attorney General objected to the Company's failure to provide responses to several of his Information Requests. *See* Transcript, pp.17-21. The Attorney General asked the Department to rule on the scope of the proceeding in order to settle the dispute regarding the Company's claim that certain of the Attorney General's Information Requests were outside the scope. *Id.* at 17-19.<sup>2</sup> The Department, however, declined to address the issues and objections raised by the Attorney General during the hearing and directed the Attorney General to file a motion or petition for consideration by the Department.<sup>3</sup> *Id.* at 17-18.

At the close of the hearing, while exhibits were being moved into evidence, the Attorney General again raised his objections to the Company's failure to respond to his Information

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<sup>1</sup> According to the procedural schedule, the deadline for responding to all discovery responses was January 11, 2002. After the Company communicated to the Attorney General that it would most likely be unable to provide responses to the Attorney General's Information Requests by the deadline, the Attorney General and the Company agreed to an extension of time until close of business on January 15, 2002. The Company failed to keep the extended deadline and submitted its responses near the close of business on January 16, 2002. The Company did not provide responses to AG 1-5, AG 1-6, and AG 1-21 until close of business on Friday, January 18, 2002.

<sup>2</sup> A Department ruling on the scope of the proceeding would have resolved the issue of the Company's failure or refusal to provide responses to several of the Attorney General's Information Requests.

<sup>3</sup> The Hearing Officer in this matter stated, "if you're asking for a motion to compel for the Attorney General's responses that they haven't fully responded to in your view, you can send that in ...if the AG has something that they would like the Department to consider, I would suggest that you put it in as a motion or a petition as opposed to us dealing with it here." Transcript, pp. 17-18.

Requests and noted his concern that many of his exhibits consisted of the Company's non-responsive answers to his Information Requests. Transcript, pp. 127-128. The Attorney General made clear his intention to file a pleading to have his issues and objections resolved. *Id.* at 128. In response to the closing remarks of the Attorney General, the Hearing Officer encouraged the parties to attempt to resolve the dispute stating, "I would suggest before anything be filed that you see if you can work out some agreement." *Id.* at 128. On the following day, Wednesday, January 23, as well as on Thursday, January 24, the Attorney General contacted the Company and unsuccessfully attempted to reach a mutually satisfactory resolution of the parties' dispute.

## **II. STANDARD OF REVIEW**

Pursuant to 220 C.M.R. 1.06(6)(c)(2), discovery before the Department is guided by the liberal discovery procedures and policies available to civil litigants under Mass. R. Civ. P. 26 *et seq.* The broad language of the rules provides for the discovery of all information that is relevant or "appears reasonably calculated to lead to the discovery of admissible evidence," so long as the materials sought are not privileged. Mass. R. Civ. P. 26(b)(1); *Hull Mun. Lighting Plans v. Massachusetts Mun. Wholesale Elec. Co.*, 414 Mass. 609, 615, 609 N.E. 2d 460 (1993); *see also* 220 C.M.R. 1.06(6)(c)(1). Relevancy is also construed broadly, encompassing "any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Cronin v. Strayer*, 392 Mass. 525, 534, 467 N.E.2d 143 (1984), *quoting Hickman v. Taylor*, 329 U.S. 495, 501, 67 S.Ct. 385, 91 L.Ed. 451 (1947). The language of Mass. R. Civ. P. 26(b) allows parties to make searching examinations into matters that may assist them in discovering non-privileged, relevant evidence. "Discovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought can have no possible

bearing upon the subject matter of the action.” *Miller v. Doctor's Gen. Hosp.*, 76 F.R.D. 136, 138 (1977). Finally, the purpose of discovery is to facilitate the hearing process by permitting the parties and the Department to gain access to all relevant information in an efficient and timely manner.

### **III. ARGUMENT**

#### **1. The Information Requests Are Within The Scope Of The Procedural Order And The Scope Of Discovery In This Proceeding.**

The Procedural Order provides that “In this phase of the investigation, the Department will focus on: (1) whether NSTAR has met the service quality thresholds established by the Department in D.T.E. 99-84, beginning September 1, 1999, and (2) if not, what penalties should be imposed by the Department on the Company.” Procedural Order, p. 2. The Company’s claim, however, that certain of the Attorney General’s Information Requests are outside the scope of this proceeding lacks merit and results from an unduly restrictive interpretation of the Procedural Order and the related scope of discovery.<sup>4</sup>

Investigating whether the Company met the service quality thresholds and standards in D.T.E. 99-84 as of September 1, 1999, allows a broad range of review and investigation into all data used or otherwise considered by the Company in reaching a determination of compliance or non-compliance with the service quality thresholds and standards. *See Hull Mun. Lighting Plans v. Massachusetts Mun. Wholesale Elec. Co.*, 414 Mass. 609, 615, 609 N.E. 2d 460 (1993)(the broad language of the rules provides for the discovery of all information that is relevant or appears reasonably calculated to lead to the discovery of admissible evidence). This is especially

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<sup>4</sup> The Company wishes to limit the Attorney General’s discovery solely to post-merger data that relate to penalties under the service quality standards in D.T.E. 99-84.

true since the Company is required in many instances to compile historical data to establish service quality benchmarks. The Attorney General's Information Requests are clearly relevant since they (1) inquire into the data used by the Company, together with the data excluded by the Company, in order to ascertain the reliability of the data; (2) inquire into the consistency of the Company's methodology; and (3) inquire into information and data that, although not directly included in the calculations of the penalties proposed by the Company, are important to determine of whether the Company's service quality has deteriorated since the merger.

The Department required the Company to measure its performance and incur penalties as a condition of approving the NSTAR merger and the Department specified standards that the Company was required to meet. *See* D.T.E. 99-19. In this proceeding, the Department seeks to review the Company's service quality since the merger and then assess any applicable penalties. In compliance with the Department's request, the Company has agreed to comply with the D.T.E. 99-84 guidelines for the period following the completion of the merger on September 1, 1999. Exh. NSTAR-1, Letter to Secretary Cottrell, DTE 99-19--Service Quality Performance Results for NSTAR, p. 3. The D.T.E 99-84 service quality guidelines (as clarified in that docket, D.T.E. 99-84) require more than the computation of thresholds and performance penalties--there are very specific non-penalty related performance reporting requirements. The Department required that certain data be reported on an annual basis--several of the Attorney General's Information Requests asked for this data, both for the period beginning with the merger but also on a historical basis, to determine whether there had been significant changes or deterioration in any of these areas that should be addressed by the Department in its investigation. *See e.g.*, AG-1-17, AG 1-18, and AG 1-23.

Whether the Company was in compliance or non-compliance with the service quality thresholds as of 1999 and beyond has bearing upon the penalties, both monetary and otherwise, that the Company may incur.<sup>5</sup> Accordingly, inquiries related to the Company's compliance or non-compliance with service quality thresholds that can result in a penalty assessment are within the scope of this proceeding and are discoverable. Therefore, the Department should compel the Company to provide answers the following Information Requests of the Attorney General: AG 1-9; AG 1-12; AG 1-13; AG 1-15; AG 1-17; AG 1-18; AG 1-22; and AG 1-23.

**B. The Attorney General Is Entitled To An Order Compelling Discovery Responses.**

When a party fails to respond to discovery, the Department has the authority to compel a response, impose appropriate sanctions under Mass. R. Civ. P. 37 and take other remedial steps. 220 C.M.R. 1.06(6)(c)(4). The Attorney General has served relevant and probative discovery upon the Company and is entitled to timely responses so as not to delay or hinder these proceedings any further.

**IV. CONCLUSION.**

Whether the Company was in compliance or non-compliance with the service quality thresholds as of 1999 and beyond has bearing upon the penalties, both monetary and otherwise, that the Company may incur. Inquiries related to the Company's compliance or non-compliance with service quality thresholds that can result in a penalty assessment are within the scope of this proceeding and are discoverable. Therefore, the Department should compel the Company to provide answers the following Information Requests of the Attorney General: AG 1-9; AG 1-12;

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<sup>5</sup> Non-compliance with only *certain* of the service quality standards or thresholds results in a penalty assessment.

AG 1-13; AG 1-15; AG 1-17; AG 1-18; AG 1-22; and AG 1-23.

**WHEREFORE** the Attorney General requests:

1. That the Department issue an Order compelling the Company to provide answers to Information Requests AG 1-9; AG 1-12; AG 1-13; AG 1-15; AG 1-17; AG 1-18; AG 1-22; and AG 1-23 within five (5) calendar days of the Order, and
2. Such further relief that is just and proper.

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Dated: January 25, 2002

## ATTACHMENT 1

- AG-1-9 Please provide for calendar year 2001 the equivalent of the data filed by the Companies on April 11, 2001 as the “first annual service quality report under the merger plan.” If the data is not yet available, please provide an estimate of when the Companies will be able comply with this request and provide the response at that time. Provide all supporting calculations, source data, details of any excluded data (description of the excluded item and rationale for each exclusion), and assumptions supporting the service quality benchmarks and penalty/off-set amounts. In addition to a hard copy response, all calculations and computations should be provided in the form of working (including working formulae with all related and referenced spreadsheets) Excel 2000 or Lotus 123 ver. 9.5 for Windows compatible spreadsheets.
- AG-1-12 Referring to the Companies’ Service Quality Plan filed November 16, 2001 (as updated November 19, 2001) in D.T.E. 01-71. Please provide the benchmarks and standard deviation calculations separately for each of the NSTAR companies based on data available through calendar year 2001. Include all supporting calculations, source data, details of any excluded data (description of the excluded item and rationale for each exclusion), and assumptions supporting the service quality measures and any penalties incurred. In addition to a hard copy response, all calculations and computations should be provided in the form of working (including working formulae with all related and referenced spreadsheets) Excel 2000 or Lotus 123 ver. 9.5 for Windows compatible spreadsheets.
- AG-1-13 Referring to the Companies’ Service Quality Plan filed November 16, 2001 (as updated November 19, 2001) in D.T.E. 01-71. Please provide the benchmarks and standard deviation calculations for the NSTAR companies “on a consolidated, system-wide basis” based on data available through calendar year 2001. Include all supporting calculations, source data, details of any excluded data (description of the excluded item and rationale for each exclusion), and assumptions supporting the service quality measures and any penalties incurred. In addition to a hard copy response, all calculations and computations should be provided in the form of working (including working formulae with all related and referenced spreadsheets) Excel 2000 or Lotus 123 ver. 9.5 for Windows compatible spreadsheets.
- AG-1-15 Please explain, in detail, how the NSTAR companies’ data was consolidated. Identify all data collection methodology differences and how these were over come in the consolidation process. This response should explain all differences between the statistics provided in response to AG-1-12 and AG-1-13.
- AG-1-17 Please provide 10 years of statistics and information for each Company for the following reportable items, as required in the Service Quality Plan, sections IV and VIII:  
Staffing Level in compliance with G.L. c. 164, § 1E,  
CAIDI,  
Electric Distribution Line Loss,  
Restricted Work-Day Rate,  
Damage to Company Property,  
Annual Major Outage Events,



Capital Expenditure Information,  
Spare Component and Acquisition Inventory Policy and  
Practice,  
Poor Performing Circuits,  
Electric Service Outages, and  
Other Safety Performance Measures.

In cases where 10 years of data are not available, provide the data for the years available and explain why older data not available.

- AG-1-18 Please provide the results of all customer surveys conducted by any NSTAR Company during the past 10 years. The results should clearly identify for each survey the purpose of the survey, the dates the survey was conducted, the survey method (telephone, mail, e-mail, in person, etc), how the surveyed group was selected, the statistical validation of the survey, the identity of the survey designer and who actually conducted the survey, tabulated and interpreted the results. Provide copies of each questionnaire or script used.
- AG-1-22 Regarding Customer Service Guarantees. Please provide each Companies' policy regarding customer notification of scheduled service interruptions. Include the definition of a "scheduled service interruption," the minimum notice required, method of notification (phone, mail), what records are kept and used to validate a customer's claim of no or inadequate notice?
- AG-1-23 Please provide all historic MAIFI data for each of the NSTAR electric companies. Please explain how this data is/was collected (how recorded, method of recording, to whom it, what level of aggregation used in reporting data, etc.), to whom it was reported (internally and externally), and if it is no longer being collected, explain why. Include all related procedures, policies and guidelines related to the collection and reporting of outage data used by the Companies.

The Company provided the following response to AG 1-9, and as to the other Information Requests, directed the Attorney General's attention to its response in AG 1-9:

Data through the calendar year 2001 is not yet available. The Company will include such data as part of the March 1, 2002, filing

In addition, on December 6, 2001, the Department of Telecommunications and Energy issued a procedural order in this proceeding, D.T.E. 01-71A (the "Procedural Order"). In that order, the Department indicated that "[i]n this phase of the investigation, the Department will focus on: (1) whether NSTAR has met the service quality thresholds established by the Department in D.T.E. 99-84, beginning September 1, 1999, and (2) if not, what penalties should be imposed by the Department on the Company" (Procedural Order at 2). The Department established a procedural schedule that required the submission of pre-filed testimony by the Company on December 14, 2001. Based upon the scope of the first phase of this proceeding outlined by the Department in the Procedural Order, the testimony filed by the Company pertains only to the Department's consideration of the application of D.T.E. 99-84 service quality standards and penalty provisions to the post-merger two year time period September 1, 1999 through August 31, 2001. As a result, the evaluation of the requested data is beyond the limited scope of this proceeding.